BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 13

RUSH UNIVERSITY MEDICAL CENTER, Employer, And LOCAL 743, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Union.	)	Case Nos. 13-RC-143495, 143510, 143497 (Consolidated Self-Determination Election Petitions)

PETITIONER'S RESPONSE TO
EMPLOYER'S REQUEST FOR REVIEW

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Local 743 International Brotherhood of Teamsters ("Local 743" or "Petitioner") files this response to the Employer's Request for Review of the Regional Director's consolidated Decision and Direction of Election ("DDE") for four separate self-determination voting groups, as stated on page 24 of the DDE. Three petitions were consolidated for hearing purposes only and seek self-determination elections to add identifiable and distinct groups of service and maintenance employees to an existing non-conforming bargaining unit created years before the National Labor Relations Act was amended to cover hospital workers and before the existence of the Board's Health Care Rule.

STATEMENT OF THE CASE

The Employer presented no sound reason to justify a departure from the Board's Health Care Rule, which supports the rejection of the creation of an all-encompassing residual bargaining unit to be added to an existing non-conforming bargaining unit. The Employer opposes the voting groups sought in these self-determination election petitions because it argues that the only appropriate voting group should be the wall-to-wall combination of all nonprofessional employees employed in the medical center, the hospital and other nearby

facilities, such as the school for the hospital's employees' children, the medical clinics in the nearby professional building and a long term convalescent facility, among others. The Employer is attempting to enlarge the existing and non-conforming bargaining unit so that it will conform to the Board's health care bargaining unit rule. Such an enlargement is contrary to the existing Board case law and the well-established self-determination election principles of the Board. In an earlier case involving the Employer's Patient Care Technicians, Case No. 13-RC-132042 ("PCT Case"), the Regional Director and the Board rejected this attempt to create a wall-to-wall voting unit.

In addition to the findings of the Regional Director on the jobs sought in the petition for twenty-four job classifications, Case No.13-RC-139061, dismissed on December 10, 2014, the Petitioner offers additional evidence in support of the three petitions filed in this case. Testimony of the employees who work in the job classifications demonstrates the separate administrative departments and supervision of the employees in the work units sought in these petitions. Within each group, there are different job titles that are functionally integrated to create a single appropriate voting group.

Following departmental or administrative lines, the Regional Director determined these four voting groups to be appropriate:

a. Phlebotomists, Case No. 13-RC-143510. The Regional Director directed an election among the Employer's full-time and regular part-time phlebotomists. The Phlebotomists are the only employees whose sole responsibility is to draw blood. It is estimated that approximately 10 percent of the blood drawn is by nurses and medical doctors. No other non-professional employees perform this work.

b. Supply Chain (SPD), Case No. 13-RC-143495. The Regional Director ordered two elections for (1) the Employer's full-time and regular part-time OR Materials Tech and Supply Chain Techs employed in the Employer's Materials Management Department and (2) the Employer's full-time and regular part-time Supply Chain Techs employed in the Employer's Warehouse Operations Department. The non-professional employees in this division are responsible generally for receiving supplies and inventory from the off-campus warehouse and sending it to the main Hospital's receiving dock for distribution to the patient care areas located throughout the Hospital. The Regional Director determined that the employees who work in this division sought by a single petition, should be divided into two voting groups based upon departmental lines: Warehouse Operations Department and Materials Management Department. The Union does not object to this determination.

c. Food and Nutrition Services, Case No. 13-RC-143497. The Regional Director directed an election among the Employer's full-time and regular part-time unrepresented non-professional employees in the Food and Nutrition Services Department, including, Bakers, Cashiers, Senior Cashiers, Cooks, Diet Clerks, Food Servers, Food Service House Attendants, and Secretaries. The jobs of Baker, Cook, Cashier, Diet Clerk, Food Service House Attendant and Food Server are functionally integrated in that they, with the assistance of bargaining unit employees known as Food Service Assistants, prepare the food in the Central Kitchen for distribution to patients and in the cafeteria for distribution to Hospital guests and employees. The employees who work in the organizational unit Food and Nutrition Services are responsible for preparing and serving food in the Hospital's Central Kitchen, Cafeteria and Room 500, a dining room for administrators and medical doctors. The Regional Director determined that the employees petitioned for by the Petitioner is not an appropriate voting group and added

additional classifications of other non-professional employee jobs, namely employees in the job classification of Secretary III. There are four employees in that job classification, and the Employer asserted that two of them are confidential employees.

The Regional Director's directed elections for four voting groups is consistent with the Board's decision in St. Vincent Charity Medical Center, 357 NLRB No. 79 (2011) and the Health Care Rule.

ARGUMENT

I. The Employees in the Four Separate Voting Groups are Sufficiently Distinct to Support Four Separate Self-Determination Elections.

A. Supply, Processing and Distribution (SPD)

The Supply Chain Techs are responsible for the day-to-day receipt and distribution of supplies to the medical center. They receive, pack and unpack supplies and deliver supplies to locations throughout the Hospital[1]. They also are responsible for verifying the inventory levels, assuring the accuracy of received supplies by counting and comparing packing lists/restock lists with delivered goods, inspecting for damage and loading and unloading supply carts and parking the carts in a staging area for delivery. The carts are moved on a robotic system to deliver supplies throughout the hospital. This system is known as the AGV system. Employer's Exhibit ("Er. Exh.") 6. Approximately 60 employees work in the supply chain section of the Hospital in Materials Management and the Warehouse. Overall, this is known as Supply, Processing and Distribution.[2]

Although the Supply Chain Techs are integrated in the shipping and receiving of supplies between the Warehouse and the Hospital, these employees work in separate departments. Lisa

[1] The Hospital includes, among others, the Tower and Atrium buildings.

2 Robinson referred to her department as the "Supply Processing Department." (Robinson, Tr. p. 227). However, a Supply Chain Tech-Warehouse testified that SPD refers to "Supply, Processing and Distribution." (Carter, Tr. p. 470).

Robinson ("Robinson") testified from SPD. SPD includes the Materials Management Department and the Warehouse. (Schumpert, Tr. p. 185). Robinson is a Supply Chain Tech I-Materials Management on the first shift, working 7:00 a.m. to 3:30 p.m. in the Hospital. (Robinson, Tr. p. 222-223, 229). Second shift is 3:00 p.m. to 11:30 p.m. and third shift is 11:00 p.m. to 7:30 a.m. (Tyler, Tr. p. 520). There are three levels of Supply Chain Techs: I, II and III.[3] (Robinson, Tr. p. 225). The Supply Chain Techs work throughout the entire Hospital and at the Warehouse. (Schumpert, Tr. p. 198). Harry Campbell ("Campbell") and Rebecca Lennington ("Lennington") are the supervisors in SPD and Materials Management and have authority over the three shifts. (Robinson, Tr. p. 228; Schumpert, Tr. p. 198; Tyler, Tr. p. 521). The Supply Chain Techs-Warehouse and Materials Management attend employee meetings together approximately quarterly. (Tyler, Tr. pp. 538-539). At the meetings, they discuss employee issues related to the employees in SPD located in receiving and the Warehouse. (Tyler, Tr. p. 539). In addition to attendance and performance issues, the meetings cover procedures that employees in SPD are to follow related to paperwork required for, as an example, returning supplies to the Warehouse. (Tyler, Tr. pp. 544-545).

The Supply Chain Techs-Materials Management report for their shift on Level 1 of the subbasement of the Midwest Orthopedic Building. (Robinson, Tr. p. 229; Tyler, Tr. p. 521). The SPD offices are located in the Midwest Orthopedic Building. (Tyler, Tr. p. 523). The Supply Chain Techs are assigned work and begin performing their duties at the Level 2 subbasement of the Midwest Orthopedic Building. (Robinson, Tr. p. 229). Either the Tech IIIs or Campbell assign work to the Supply Chain Techs. (Robinson, Tr. p. 229). The Supply Chain Techs in the

3 Some of Robinson's co-workers who also perform supply duties wear uniforms that identify them as "material handlers." (Robinson, Tr. p. 227). The "material handler" currently is considered an "SPD Tech I." (Robinson, Tr. p. 227).

Hospital earn from approximately $11.00 per hour and up based on their years of service. (Tyler, Tr. p. 534).

There are Supply Chain Techs I and III who work in the Warehouse located at 2061 West Hasting. (Robinson, Tr. p. 265; Carter, Tr. pp. 471-472). The Supply Chain Techs-Warehouse are interchangeable with Supply Chain Techs-Materials Management. The Supply Chain Techs (I, II, and III)-Materials Management work in the Warehouse on overtime shifts. (Robinson, Tr. p. 237; Carter, Tr. p. 488). The overtime work at the Warehouse occurs once a week or every other week. (Carter, Tr. p. 489). Two to three Supply Chain Techs-Materials Management work at the Warehouse each time there is an opportunity. (Carter, Tr. p. 489). Additionally, the Supply Chain Techs-Warehouse work overtime, performing Supply Chain Tech-Materials Management duties at the dock located in the Hospital. (Robinson, Tr. p. 268; Stephens, Tr. p. 311-312).

The Supply Chain Techs-Warehouse report for their shifts in the Warehouse. (Carter, Tr. p. 473). The Supply Chain Techs-Warehouse earn approximately from $12.40 to $20-30 per hour. (Carter, Tr. pp. 491-492). In the Warehouse, there are two shifts from 5:30 a.m. to 2:00 p.m. and 2:30 p.m. to 11:00 p.m. (Carter, Tr. p. 470). On the second shift, there are approximately ten Supply Chain Techs scheduled to work. (Carter, Tr. p. 471). There is an eight hour overnight shift beginning at 2:00 a.m. (Carter, Tr. p. 471). The Warehouse receives supplies every night in bulk and the Supply Chain Techs open the boxes and put the supplies on the shelves. (Carter, Tr. p. 483-484). The Supply Chain Techs also send supplies to the Hospital for the Supply Chain Techs-Materials Management to receive, process and distribute. (Robinson, Tr. p. 233).

The Supply Chain Tech IIIs-Warehouse distribute work assignments to the Supply Chain Tech Is and are referred to as the supervisors[4]. (Carter, Tr. p. 473-474). The assistant manager in the warehouse is Hilda Sanchez who reports to Gerald Tisdale who reports to Becky. (Carter, Tr. p. 473). The Supply Chain Techs-Warehouse receive orders for supplies that are printed out on the Warehouse computer-printer. (Robinson, Tr. p. 235-236). The Supply Chain Techs-Warehouse receive phone calls from the Hospital for supply orders. (Carter, Tr. p. 478). The phone calls may come from Supply Chain Techs-Materials Management or from Nurses, Medical Doctors or Unit Clerks. (Carter, Tr. p. 480; Tyler, Tr. pp. 535-536). The supply orders come from different departments of the Hospital. (Carter, Tr. p. 475). The Supply Chain Techs-Warehouse walk up and down the aisles in the warehouse to pick supplies that complete the orders. (Robinson, Tr. p. 236, 237; Carter, Tr. p. 474; Jackson, Tr. p. 21[5]). The supplies are placed on flatbeds or in bins to be taken to the floors in the Hospital. (Robinson, Tr. p. 239; Jackson, Tr. p. 22; Carter, Tr. pp. 474-477).

The Supply Chain Techs-Warehouse also restock carts called nurse servers. (Robinson, Tr. p. 236). The nurse servers contain supplies, such as gauze, tongue blades, Vaseline, lubricant jellies, tape, swabs, alcohol pads, scissors, suture removers, footies and Band-aids. (Robinson, Tr. p. 254). The supplies contained in the nurse servers also are contained in the ParEx rooms. (Robinson, Tr. p. 254). ParEx is an area on the patient floors where the medical staff retrieve supplies. (Robinson, Tr. p. 232). An order for supplies in the ParEx rooms is automatically generated when the supplies are low. (Robinson, Tr. p. 233). The order is received by the Supply Chain Techs-Warehouse. (Robinson, Tr. p. 233).

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[4] The parties stipulated that the Supply Chain Tech IIIs are not supervisors within the meaning of the NLRA. (Tr. p. 493-494).

[5] References to Jackson's testimony are from the transcript in Case No. 13-RC-139061.

The Supply Chain Techs-Warehouse pre-stock the med carts and nourishment carts. (Robinson, Tr. p. 236). The nourishment cart contains supplies, including cups and cup liners for the pitchers. (Robinson, Tr. p. 251). There also is a cart for personal protective equipment ("PPE") that the Supply Chain Techs-Warehouse stock. (Robinson, Tr. p. 236). The PPE includes gowns, masks and gloves. (Robinson, Tr. p. 252). The nurse servers are connected to the PPE cabinet. (Robinson, Tr. p. 252). The Supply Chain Techs-Warehouse also pre-stock the carts for the ParEx room. The Supply Chain Techs-Warehouse stock case carts for individual patient surgeries. (Carter, Tr. p. 475). Finally, the Supply Chain Techs-Warehouse process credits in the Warehouse. (Robinson, Tr. p. 239). "Credits" refers to returns to the Warehouse of supplies that the patients did not use or the doctors and nurses did not need. (Robinson, Tr. p. 239). Credits are sent back to the Warehouse from the Hospital for the Supply Chain Techs to restock. (Robinson, Tr. p. 239). The Warehouse receives returns every day. (Carter, Tr. p. 482).

The carts that are stocked by the Supply Chain Techs-Warehouse are put into bins. (Carter, Tr. p. 477). The bins are placed near the dock at the warehouse. (Carter, Tr. p. 477). The drivers load the bins onto a truck and transport them to the Hospital. (Robinson, Tr. p. 236; Carter, Tr. p. 477). The supply carts that are delivered to the Hospital from the Warehouse are driven to a lot located by a dock in the lower level of the Midwest Orthopedic Building. (Robinson, Tr. p. 239-242, 246; Jackson, Tr. p. 23).

The Supply Chain Techs-Materials Management who regularly work at the Hospital retrieve the bins from the dock. The bins are loaded onto the dock by the drivers, who are not employees of Rush. (Carter, Tr. p. 478; Tyler, Tr. p. 524). The supplies are distributed to the patient floors through an electronic system called the AGV, commonly referred to as the robot. (Robinson, Tr. pp. 233, 234; Tyler, Tr. p. 523; Jackson, Tr. pp. 24-25). The Supply Chain

Techs-Materials Management operate the AGV system. (Robinson, Tr. pp. 248, 249; Tyler, Tr. p. 525). The carts are put on the AGV track and the Supply Chain Techs-Materials Management program the AGV system to direct the robot where to go. (Robinson, Tr. p. 247; Stephens, Tr. p. 313; Tyler, Tr. pp. 524-525; Jackson, Tr. p. 26).

The robot picks up the cart and takes it to an elevator to go to the floor where it was programmed to go. (Robinson, Tr. pp. 235, 247, 248; Tyler, Tr. p. 524). The robots have their own elevators. (Oats, Tr. p. 291). The elevators are located on the west side of each floor in the Tower. (Oats, Tr. p. 291). The robot is monitored by the Supply Chain Techs-Materials Management. (Robinson, Tr. p. 248; Tyler, Tr. p. 527). There are Supply Chain Techs-Materials Management assigned to watch the AGV system on monitors for entire shifts. (Tyler, Tr. p. 542). If there are mechanical problems with the AGV system, the Supply Chain Techs-Materials Management troubleshoot the problems that may arise with the robot or the elevators. (Robinson, Tr. p. 248; Stephens, Tr. p. 309). The Supply Chain Techs-Materials Management meet the robot on the patient floors to retrieve the cart of supplies, unload supplies and replenish the stock of supplies. (Robinson, Tr. p. 234; Oats, Tr. pp. 291-292).

The Supply Chain Techs-Materials Management on the third shift primarily work in the Emergency Department ("ED"). (Tyler, Tr. p. 523). They send the robot to the ED area located on the first floor and meet the carts. (Tyler, Tr. pp. 524-526). The Supply Chain Techs remove the supply carts from the patients' rooms, refill the supplies and return them to the patients' rooms in the ED. (Tyler, Tr. p. 526). There are approximately 60 rooms in the ED. (Tyler, Tr. p. 526). In the ED, the Supply Chain Techs also restock the supply rooms. (Tyler, Tr. p. 533). The Supply Chain Techs on the third shift stock labor and delivery rooms located on the eighth

floor of the Tower. (Tyler, Tr. pp. 527-528). The supplies are sent to the eighth floor with the AGV. (Tyler, Tr. p. 528).

On the first shift, the Supply Chain Techs-Materials Management stock supplies in the Atrium and some areas of the Tower in addition to responding to the stat store phone in all areas of the Hospital. (Tyler, Tr. p. 528). On the second shift, the Supply Chain Techs-Materials Management stock some areas of the Tower, JRB ("Johnston R. Bowman Health Center") and other areas of the Hospital. (Tyler, Tr. p. 528). The Supply Chain Techs-Materials Management take the nurse server carts to the patient care floors for the individual patient care room. (Robinson, Tr. p. 253). The Supply Chain Techs take the nourishment carts to a kitchenette on each floor of the hospital for PCT's and nurses to use for their patients. (Robinson, Tr. p. 251). The Supply Chain Techs take the med carts to the med wings. (Robinson, Tr. p. 253). There are two med rooms per wing on the east side and the west side. (Robinson, Tr. p. 253). On the west side, there are southwest and a northwest wings. (Robinson, Tr. p. 253). There are two med rooms in the southwest wing and two med rooms in the northwest wing. (Robinson, Tr. p. 253). During the distribution of supplies to the patient care floors, the Supply Chain Techs-Materials Management interact with the PCT's and the Unit Clerks. (Robinson, Tr. p. 255). If the PCT, Unit Clerks or Nurses are looking for a specific supply, they will discuss the matter with the Supply Chain Tech to get what they need. (Robinson, Tr. p. 255).

Supplies also are brought from the Warehouse to restock the stat store located in the Midwest Orthopedic Building. (Robinson, Tr. p. 234; Tyler, Tr. p. 531). When there is an order to the stat store for supplies, a Supply Chain Tech III-Warehouse brings stat orders from the Warehouse to the dock in SPD trucks driven by the Techs. (Robinson, Tr. p. 240, 266; Carter, Tr. p. 480). The stat store within the Hospital looks like a miniature warehouse where some of the

supplies are kept. (Robinson, Tr. p. 230). The first shift Supply Chain Tech who is assigned the stat store phone is referred to as a "runner." (Robinson, Tr. p. 229).

On all shifts, the Supply Chain Techs-Materials Management respond to stat orders. (Robinson, Tr. p. 229; Oats, Tr. p. 291; Tyler, Tr. p. 527). All Supply Chain Techs (I, II, III)-Materials Management generally perform many of the same duties. (Tyler, Tr. pp. 540-541). The Tech I's do not monitor the AGV or carry the stat phone because they are not as knowledgeable about the AGV system or the names of the supplies. (Tyler, Tr. p. 541). The OR Tech (discussed in detail below), Unit Clerk, Patient Care Technician, Nurse or Doctor on the patient floor calls the stat store phone when they need supplies right away or when they cannot locate a supply that they need. (Robinson, Tr. p. 230, 231; Tyler, Tr. p. 531). The employee, usually a Supply Chain Tech II or III-Materials Management, assigned to the stat store phone answers calls that require an immediate response to supply requests. (Robinson, Tr. p. 230; Tyler, Tr. p. 530). The Supply Chain Tech assigned to the stat store phone performs other supply chain duties such as unloading supplies to stock the ParEx[6] rooms and respiratory areas are on Floors 11 and 10. (Robinson, Tr. p. 232, 258-259). This assignment lasts an entire shift. (Robinson, Tr. p. 258).

Supplies are ordered through EPIC. (Oats, Tr. p. 290). The runner also receives orders sent through the EPIC computer software. (Robinson, Tr. p. 256). If the supply being sought is not in EPIC, the Supply Chain Techs in either Materials Management or Warehouse are notified to find the item sought. (Oats, Tr. pp. 297-299). The orders are received in the stat store. (Robinson, Tr. pp. 256-257; Oats, Tr. p. 300). The Supply Chain Tech-Materials Management fills the orders for supplies from the stat store or calls a Supply Chain Tech-Warehouse to bring

6 Par Ex also is referred to as Omni Cell. (Robinson, Tr. p. 232).

the supplies to the Hospital and a Supply Chain Tech-Materials Management retrieves the supplies from the dock. (Robinson, Tr. pp. 256-257). The Supply Chain Tech-Materials Management personally delivers stat orders to the requesting floor. (Oats, Tr. p. 295; Tyler, Tr. pp. 532-533).

The Supply Chain Tech-Materials Management carrying the stat store phone on Saturday and Sunday receives stat orders for case carts. (Robinson, Tr. p. 242, 243). A case cart is a cart of supplies needed for a scheduled surgical procedure. (Robinson, Tr. p. 243). Someone in the operating room ("OR") may request a case cart or a Supply Chain Tech-Warehouse calls the stat phone to let the Supply Chain Tech-Materials Management know that a case cart is ready. (Robinson, Tr. p. 243, 245; Tyler, Tr. p. 531). When the case cart arrives, the Supply Chain Tech-Materials Management meets the driver at the lower level of Midwest Orthopedic to send the cart on the AGV to central stores[7]. (Robinson, Tr. p. 240, 243). Central stores is located between the lower levels of the Atrium and the Tower. (Robinson, Tr. p. 244). The Supply Chain Tech follows the robot to central stores where an employee in central processing retrieves the supplies from the Supply Chain Tech. (Robinson, Tr. p. 240). Central stores is responsible to send the case cart to the requesting location. (Robinson, Tr. p. 244).

The SPD is a distinct voting group from Environmental Services ("EVS") because of the different titles and duties, but there is functional integration with EVS employees, who request supplies from the Supply Chain Techs-Materials Management. The latter then fill the orders. (Stephens, Tr. p. 310). Additionally, EVS uses the same AGV system as the Supply Chain Techs to move linens and trash. (Smith, Tr. pp. 547-548). A Supply Chain Tech in ED retrieves linen, linen bags and carts, and empty trash dumpsters from the AGV. (Smith, Tr. p. 548).

[7] "Central stores" may also be a reference to "stat store", being the central storage location for supplies in the Hospital.

Supply Chain Techs move the EVS supplies into the ED for EVS to pick up. (Smith, Tr. p. 549). The EVS employee returns full linen carts and trash dumpsters to the AGV room, and a Supply Chain Tech puts it on the AGV system. (Smith, Tr. p. 554). Employees in EVS also operate the AGV system to deliver and pick up linens and trash. (Stephens, Tr. pp. 309, 315; Tyler, Tr. p. 525). This evidence demonstrates the work relationship between the two distinct groups.

The **OR Materials Technician** essentially is a specialized category of Supply Chain Technician. The "OR Tech I" works on the operating room floors. (Er. Exh. 1-Tab 4, Exh. 39, Case No. 13-RC-132042). The OR Tech orders supplies needed for the OR, retrieves supplies from the AGV and stocks the supplies in the surgical areas of the Hospital. (Robinson, Tr. p. 231). The OR Materials Tech is in the Materials Management Department. (Tr. p. 281). The OR Techs and the Supply Chain Techs-Materials Management punch in at the same place and take their breaks in the same area. (Tyler, Tr. p. 537). On first shift, there are approximately five OR Tech I's. (Robinson, Tr. p. 268). Monday through Friday, there is an OR Tech I who works in the stat store. (Robinson, Tr. p. 245). On third shift, the OR Techs start their shift at the same time and in the same location as the Supply Chain Tech. (Tyler, Tr. p. 536). The OR Tech I's duties include receiving orders for case carts, picking up the case carts from the lot and taking them to central stores. (Robinson, Tr. p. 245). The OR Techs prepare the OR's and set up the supplies needed for surgery. (Tyler, Tr. p. 529). The difference between the OR and other areas of the Hospital where Supply Chain Techs work is that the OR is a sterile environment. (Tyler, Tr. pp. 529-530). The OR Techs have to maintain the sterile environment. (Tyler, Tr. pp. 529-530).

The Supply Chain Techs-Materials Management and OR Techs are two functionally distinct groups as found by the Regional Director, but they work in a single hospital department.

The Supply Chain Techs-Materials Management work with the OR Techs in the Atrium on the lower level. (Robinson, Tr. p. 269). They work in the same area unloading or preparing their carts to send to the floors in the Hospital on the AGV. (Robinson, Tr. p. 269; Tyler, Tr. p. 536; Jackson, Tr. p. 26). OR care requires different supplies than what the Supply Chain Techs-Materials Management work with. (Robinson, Tr. p. 269-270). The supplies that the OR Techs and the Supply Chain Techs-Materials Management receive and distribute are held in the same main supply room in the Hospital. (Tyler, Tr. p. 538). The Supply Chain Techs-Materials Management talk to the OR Techs to determine which supplies are needed so that they can fill supply orders and obtain specific supplies that the OR Tech has. (Robinson, Tr. p. 270; Tyler, Tr. pp. 536-537). OR Techs also work as Supply Chain Techs, when needed. (Robinson, Tr. p. 270, 273-274). On the first shift, the OR Tech holds the stat store phone, and a Supply Chain Tech is a runner. (Tyler, Tr. p. 531).

B. Food and Nutrition Services Department

The food service employees are functionally integrated and create a distinct voting unit in that they are responsible for food preparation, serving, selling and collecting money for the sales. Even the Cashiers prepare and cook food. The Regional Director has added the classification of Secretary II to the voting group, but two of the secretaries are confidential employees. DND, p. 22. The food service employees are described as follows:

1. Cooks

The Cafeteria cooks food for the public. (Nathan, Tr. pp. 342-343). James Dravenack is the manager of the Cafeteria. (Nathan, Tr. p. 356). Cafe 7 and In A Rush are under the administrative umbrella of the Cafeteria. (Davis, Tr. p. 29). The Cafeteria has a separate kitchen with classifications of Cooks, FSA's and Cashiers. (Nathan, Tr. p. 355; Davis, Tr. p. 27).

George Marmon supervises everyone in the Cafeteria and Cafe 7. (Davis, Tr. p. 71). Sandra Huerta is a Supervisor who assigns work to the Cooks in the Cafeteria. (Davis, Tr. p. 70; Cerrillo, Tr. p. 91; Schumpert, Tr. p. 171). The Cooks rotate among four different positions: broiler, soups, oven and prep. (Cerrillo, Tr. p. 94). One of the Cook II's in the Cafeteria earns $15.30 per hour. (Cerrillo, Tr. p. 106).

There are six Cooks in the Central Kitchen. (Nathan, Tr. p. 329). All of the Cooks are classified as Cook II. (Nathan, Tr. p. 357). The Central Kitchen prepares food for the patients. (Nathan, Tr. p. 343). The Central Kitchen is located in the subbasement of the Atrium building. (Davis, Tr. p. 40; Nathan, Tr. p. 320). Teasie Nathan ("Nathan") is a Cook II in the Central Kitchen. (Nathan, Tr. p. 319). Nathan earns $18.47 per hour. (Nathan, Tr. p. 357). Cooks, Bakers, FSA's and Diet Clerks are functionally integrated in Central Kitchen. (Davis, Tr. p. 53). The supervisors in the Central Kitchen supervise all of the employees who work in the Central Kitchen. (Nathan, Tr. p. 337). The supervisors include Michael Brown, Lolita, Linda, Raynelle, Gilford, Dominque, James Dravenack and Janice.[8] (Nathan, Tr. p. 337). The supervisors report to Stanley Walker and John Athamanah who report to Diane Sawyer. (Nathan, Tr. pp. 339-341). When the Cooks are short-staffed, the Bakers, Room 500 Cooks and/or Cafeteria Cooks perform Cook duties in the Central Kitchen. (Nathan, Tr. pp. 337-338, 359-360; Cerrillo, Tr. p. 104). The Cooks train the Bakers how to make the food in the Central Kitchen. (Nathan, Tr. p. 359). The Central Kitchen employees prepare food for the patients, Cafe 7, the Cafeteria and Room 500. (Nathan, Tr. p. 320). In the Central Kitchen, there are a soup station, a vegetable station and a dessert station. (Nathan, Tr. p. 322-323). There is a refrigerated room called "cook/chill" where food is kept after it has been prepared and is ready to serve. (Nathan, Tr. p. 334).

[8] The employees were not familiar with the last names of some of the supervisors.

There is a cook/chill Cook (CC), breakfast Cook (position 46), prep Cook (position 37), dinner Cook (position 48) and a special Cook (position 49) who work in Central Kitchen. (Nathan, Tr. p. 326). The Cooks are trained in each position for two weeks and rotate among positions. (Nathan, Tr. p. 363). The CC works from 6:00 a.m. to 2:30 p.m.; the breakfast Cook works from 4:45 a.m. to 1:15 p.m.; the prep Cook works from 9:00 a.m. to 5:30 p.m.; the dinner Cook works from 10:00 a.m. to 6:00 p.m.; and the special Cook works from 11:00 a.m. to 7:30 p.m. (Nathan, Tr. p. 331-332). Room 500 employees get food prepared by the CC to serve in Room 500 or for events from the cook/chill room in the Central Kitchen. (Nathan, Tr. p. 334). The special Cook prepares special orders for the patients that the dinner Cook or the breakfast Cook do not prepare. (Nathan, Tr. p. 326). The dinner Cook prepares vegetables at the vegetable station. (Nathan, Tr. p. 325). The Cooks also prepare the food that goes on the main plate on the trays. (Nathan, Tr. p. 322, 325). The Cooks use and clean the knives, cutting boards and the slicer they use to prepare food for serving and cooking. (Nathan, Tr. p. 346).

On a daily basis, the Cafeteria Cooks or Food Service Assistants ("FSA"), who are represented employees in Food and Nutrition Services, and Room 500 employees bring a list of items that they need, and they get the food out of the CC room or the FSA's or Cooks get the food out of the CC room for them. (Nathan, Tr. p. 334-335, 343-345). Food from the cook/chill room includes soup, chili, cooked turkey and roast beef. (Nathan, Tr. pp. 334-335).

The Cooks work among the FSA's and Diet Clerks. They prepare the trays to send to the patients. The FSA's work overlapping shifts with the Cooks and Diet Clerks from 5:45 a.m. to 8:30 p.m. (Nathan, Tr. p. 332). FSA I and II's work on the food line where food is prepared. (Nathan, Tr. pp. 320-321). The FSA's perform food preparation duties such as cutting lettuce and celery. (Nathan, Tr. p. 321). The FSA's work at the tray line station where they set up the trays

for service with a warming plate, placemat, napkin, silverware and the patient menu selection. (Nathan, Tr. p. 322-323, 347-348). In the Central Kitchen, the FSA's serve milk, bread and butter and make coffee to put on the patients' trays. (Nathan, Tr. p. 322-323). The FSA's also serve soup on the trays. (Nathan, Tr. p. 323, 327). The Cooks in Central Kitchen also work in the Cafeteria when it is short-staffed. (Nathan, Tr. p. 359, 362). Cooks in Central Kitchen can permanently transfer to the Cafeteria kitchen. (Nathan, Tr. p. 364).

The parties stipulated that Cooks also work in Room 500. (Tr. p. 120). Room 500 offers a buffet and a menu. (Diaz, Tr. p. 437). Room 500 consists of a dining room and approximately 15 other rooms. (Diaz, Tr. p. 431). The parties stipulated that Room 500 is a private dining room with a separate staff. (Davis, Tr. p. 47). Food is prepared by Cooks in Room 500 and served there. (Davis, Tr. pp. 61-63). The guests are doctors, students and administrators who have a membership to eat in Room 500. (Diaz, Tr. 437-438). There is a kitchen in Room 500 where a Cook I prepares the cold food, such as salads. (Diaz, Tr. p. 432). Cook II prepares the hot food. (Diaz, Tr. p. 440). The Cooks in Room 500 may also work in Central Kitchen when it is short staffed. (Diaz. Tr. p. 450). Room 500 is located on the fifth floor of the Armour Building. (Diaz, Tr. p. 431). James Dravenack and Vivian are the managers of Room 500. (Nathan, Tr. p. 356; Schumpert, Tr. p. 171; Diaz, Tr. p. 433). Billy and Kathy are supervisors in Room 500. (Diaz, Tr. p. 432). Room 500 employees, including Cooks, also perform food preparation work in the Cafeteria when the Cafeteria is short-staffed. (Davis, Tr. pp. 83-88; Cerrillo, Tr. pp. 95-96).

2. Bakers

There is a bakery in the Central Kitchen where the Bakers work. (Nathan, Tr. p. 328). There are two Bakers. (Nathan, Tr. p. 329). Tim is the supervisor in the bakery. (Nathan, Tr. p.

337). The Bakers work Monday through Friday. (Nathan, Tr. p. 330). The Cooks and Bakers are interchangeable. The Cooks work in the bakery if there are not enough Bakers. (Nathan, Tr. p. 328, 336). The Bakers prepare bread for the Cooks to use to make pureed bread for the patients. (Nathan, Tr. pp. 335-336). The Bakers prepare cornbread, muffins, cakes, pies, brownies and other baked goods. (Nathan, Tr. pp. 329-330, 336).

The Bakers are integrated with the Cooks, FSA's, Diet Clerks and Room 500 staff. FSAs move the tray carts to the bakery to put the desserts on the carts for the patients. (Nathan, Tr. p. 329). The Bakers prepare baked goods for the Cafeteria, In a Rush, Cafe' 7 and Room 500. (Nathan, Tr. p. 330-331). The Bakers use mixing bowls, knives, muffin pans, slicer, a machine to roll the dough flat and other machines. (Nathan, Tr. p. 358). House Attendants from Room 500 interact with the Central Kitchen to pick up food from the bakery. (Nathan, Tr. p. 333).

3. Diet Clerks

Diet Clerks work in Central Kitchen and are integrated with the FSA's and Cooks. (Nathan, Tr. p. 349). (Er. Exh. 1-Tab 4, Exhs. 26 and 27, Case No. 13-RC-132042). Diet Clerks who rotate overlapping shifts beginning at 4:30 a.m. to 7:15 p.m. (Nathan, Tr. p. 350). The Diet Clerks answer phone calls from the patients. (Nathan, Tr. p. 349). Patients call because they did not get something they ordered or because they want to change their selection. (Nathan, Tr. p. 349). The Diet Clerks get the menus ready to bring out for the tray line to set up the trays for the patients. (Nathan, Tr. p. 349). Diet Clerks make special formula for some patients and put it on the trays or personally deliver it to the patients. (Nathan, Tr. p. 350-351).

4. Cashiers

Senior Cashiers and Cashiers work in three separate areas in Food and Nutrition Services: Cafeteria, Cafe' 7 and In A Rush. The latter two are small food distribution stations or small

restaurants. James Dravenack is the manager of the retail food operations that include these three facilities. (Carless, Tr. p. 29). The Cafeteria is a large dining area on the second floor of the Hospital that serves the Hospital's employees, guests and visitors. (Carless, Tr. pp. 28 -30). In A Rush is located adjacent to the Cafeteria, and Cafe' 7 is on the seventh floor of the Hospital's new tower on the east side. (Carless, Tr. pp. 33, 36). The Cashiers, rotate positions between these three food distribution areas.

In addition to simply charging the customers and collecting money for their purchases at the cash registers, the Cashiers have an important role in the distribution and preparation of food, coffee and other beverages, including milk shakes and smoothies. (Carless, Tr. pp. 387, 389-392). Carless testified that she and the other Cashiers are responsible for making coffee and popcorn that are sold at a station in the middle of the Cafeteria. (Carless, Tr. pp. 389-391). This work is done at the beginning of the day at 6:30 a.m., and the popcorn is made at 9:30 a.m. (Carless, Tr. pp. 391-393). The Cashiers are also responsible to fill the condiment jars and replenish the coffee. (Carless, Tr. pp. 393-394). Other Cafeteria duties include assisting the FSA's in wrapping brownies, cookies, Rice Krispie treats that are served in the Cafeteria and sent to Café 7 and In a Rush. (Carless, Tr. pp. 397, 427). The Cashiers are ordered to perform the Cooks' food preparation duties. (Carless, Tr. pp. 31-32).

At In a Rush, the Cashiers bring the food to the serving cart, wrap muffins and breakfast rolls, wait on the customers, sterilize the coffee containers and clean the refrigerators. (Carless, Tr. pp. 406, 408). The FSA II's bring baked goods from the Baker in pans, and the Cashiers tell them when to bring the pans back to the Cafeteria's dish room to be cleaned. (Carless, Tr. pp. 33-35; Davis, Tr. p. 33-35). The FSA's do dishwasher work on the dishware from In a Rush,

and the Cashiers clean their own utensils in a dish machine they use "to wash their stuff." (Carless, Tr. p. 34). The Cashiers also take dishes to the Cafeteria dishroom. (Davis, Tr. p. 33).

In Cafe' 7, the Cashiers prepare the heaters for hot food, fill water for the steam tables, make panini sandwiches, hot dogs, pretzels, flatbread, popcorn; prepare the coffee and check the temperature of the food to be sold. (Carless, Tr. pp. 410-412, 415-416). They also change the steam table pans and clean the microwaves. Cashiers have daily contact with the FSA's because they take food from the Cafeteria to Cafe' 7 and interact with the Cashiers. (Carless, Tr. pp. 408, 413, 423; Davis, Tr. p. 36-41). Davis described these as food runs for food and dishes. (Davis, Tr. pp. 36-42). In Café 7, the Cashiers also have contact with the Cafeteria Cooks when they call them to order more food. As discussed above, the Cashiers also cook food in Café 7. (Carless, Tr. pp. 416-419).

Cashiers in the Cafeteria have contact with the Bakers, who work in the Central Kitchen. The nature of this interaction is to request a variety of baked goods be prepared for sale in the Cafeteria. Carless has advised them of the preferences of the customers for cakes and other food (Carless, Tr. pp. 424-446). The Cashiers in the Cafeteria also help the Cooks with food preparation in the Cafeteria. (Davis, Tr. p. 31).

5. Food Service House Attendants

The parties stipulated that Food Service House Attendants ("House Attendant") only work in Room 500. (Cerrillo, Tr. p. 115). One of the House Attendants earns $9.95 per hour. (Diaz, Tr. p. 433). The House Attendants also receive a bonus check once a month comprised of tips from the guests. (Diaz, Tr. p. 433). The House Attendants work overlapping eight hour shifts beginning at 4:30 a.m. and 9:00 a.m. (Diaz, Tr. p. 434). If Room 500 is hosting a special event, additional House Attendants are scheduled. (Diaz, Tr. p. 434). Room 500 operates

Monday through Friday and additional special events may be held on Saturdays. (Diaz, Tr. p. 435). The House Attendants set, clear and wipe tables, set up a buffet, carve meat, pour soup, change linens, clean pots, dishes and drains, power wash the floors, stock the fridge, move tables and chairs, and clean the break room and the bathroom. (Diaz, Tr. p. 436-437, 446).

The House Attendants do many of the same duties as the Food Servers. Like the Food Servers discussed below, the House Attendants take food orders and serve drinks to the guests. (Diaz, Tr. p. 438-439). The House Attendants give the food orders to the Food Server or to the Cooks. (Diaz, Tr. p. 439). The House Attendants serve the food orders to the guests. (Diaz, Tr. p. 439). The House Attendants interact with the Cooks when they need to refill food on the buffet. (Diaz, Tr. p. 440).

When there are events in the other rooms on the fifth floor, the House Attendants have ice water ready to pour for the guests and they take food into the rooms from the kitchen. (Diaz, Tr. p. 440). The events are held for different work groups within the Hospital, such as EVS and Information Systems. (Diaz, Tr. p. 441). The House Attendants clear the tables and clean the rooms. (Diaz, Tr. p. 441).

The House Attendants interact with the Cooks and Bakers when they go to the Central Kitchen and the Bakery to get food for service in Room 500. (Diaz, Tr. p. 442). Room 500 provides catering to members, such as pizzas, large amounts of sandwiches and drinks and food for a buffet. (Diaz, Tr. p. 443). The House Attendants then deliver the food to the event within the Hospital. (Diaz, Tr. p. 443). The Room Attendants set up the tables and serve the food, if requested, and clean up afterwards. (Diaz, Tr. p. 443-444).

6. Food Servers

The parties stipulated that Food Servers only work in Room 500. (Cerrillo, Tr. p. 115). They begin working at approximately 10:30 a.m. and leave at approximately 3:00 p.m. (Diaz, Tr. p. 435). There are approximately two food servers who work eight hour shifts. (Diaz, Tr. p. 435). The Food Servers greet the guests when they come into Room 500 and provide them with a menu. (Diaz. Tr. p. 438). The Food Servers take menu and drink orders from the guests of Room 500. (Diaz, Tr. p. 437). The Food Servers work with the Cooks and interact with them when they process guests' food orders. (Diaz, Tr. p. 447). (See Er. Exh. 1-Tab 4, Exhs. 31, 32). The Food Servers serve the food orders to the guests. (Diaz, Tr. p. 439). The guests pay the Food Servers through their memberships. (Diaz, Tr. p. 438). The Food Servers also are assigned to serve food at any special events in the other rooms on the fifth floor. (Diaz, Tr. p. 441). In addition to their regular paycheck and like the House Attendants, the Food Servers receive tips in a bonus check once a month. (Diaz, Tr. p. 445).

C. Phlebotomists

The administrative unit under which the Phlebotomists work is the Core Laboratory ("Core Lab"). (Employer's Exhibit 9). The Phlebotomists work three shifts. (Employer's Exhibit 9). The job of the phlebotomists, of which there are approximately 52 to 53 in the petitioned four voting group, is to draw patient blood for laboratory analysis. Eugene Smith ("Smith"), a Phlebotomist, testified that he works just about everywhere in the hospital with the exception of the emergency room and the labor and delivery section. His work day starts when he clocks in at the Core Lab.

At the beginning of a Phlebotomist's work shift, in the fourth floor Core Lab, the supervisor hands out labels to identify the rooms to which the Phlebotomists are to go for

purposes of drawing blood. (Smith, Tr. p. 129). Smith's supervisor is Geri Pettiford. Smith works the second shift from 2:00 p.m. to 10:30 p.m. The third shift starts at 10:00 p.m. and works to 4:00 a.m., and the first shift begins at 4:00 a.m. and ends at either noon or 1:00 p.m. There are different blood draw times, and the labels are generated at 2:00 p.m., 4:00 p.m. and 6:00 p.m. by a machine. The supervisor separates the labels and sends them to the Phlebotomists while they are in the hospital working with patients. At the end of a work shift, the paper work indicating the floors in which they were working is stored inside of a cabinet located in the laboratory. (Smith, Tr. p. 131).

The purpose of the Phlebotomist is to obtain blood specimens from patients by the invasive procedure of venipuncture. The Phlebotomist is responsible for obtaining specimens for routine, pre-operative, scheduled, and emergency or STAT collections. (Petitioner's Exhibit 8(a).) On the patient floors, where Phlebotomists work, they have frequent contact with the Doctors and the Unit Clerks. The Unit Clerks are in the existing, non-conforming bargaining unit. The Unit Clerk also directs the Phlebotomist to the patient's room or other location. If the patients are not in their rooms, the Phlebotomists learn from the Unit Clerks whether the patients are undergoing a test or some other procedure and then notifies the Doctor that the patient is not available for a blood draw. (Smith, Tr. p. 123). Smith also communicates with the PCTs before drawing blood to find out if a patient is combative or cooperative.

The only other employees qualified to draw blood are nurses and doctors. 90 percent of patient's blood is drawn by the Phlebotomists, 9 percent by nurses and 1 percent by medial doctors. (Smith, Tr. p. 131).

II. Self-Determination Elections For the Employees Covered in the Three Petitions are Appropriate.

A. St. Vincent is still Board Law.

The Regional Director correctly followed the Board law on self-determination elections for employees in sub-groups of residual employees and ordered four separate elections to give employees a choice as to whether they wish to join existing non-conforming units already represented by the Union. In St. Vincent Charity Medical Center, 357 NLRB No. 79 (2011), the Board concluded that the petitioned for voting group of phlebotomists was appropriate. St. Vincent presents facts nearly identical to those presented here. There, the employer was an acute care hospital, and the petitioner had, at the time of the petition, represented a non-conforming unit of approximately 200 technical, non-professional, skilled maintenance and business office clerical employees. Id. at 1. The union sought a self-determination election to add a group of approximately 15 phlebotomists to the existing unit. Id. In that case, there were about 200 unrepresented employees that the employer sought to add to the existing bargaining unit. The Regional Director initially dismissed the petition, opining that an election would risk undue proliferation of bargaining units in acute care facilities by "impermissibly leaving unrepresented other residual classifications" of the employer's employees. Id. The Board disagreed, finding the petition appropriate. It found that a self-determination election avoids any proliferation of units because it would not result in the creation of a separate bargaining unit, and the proper analysis for determining the appropriateness of the petitioned-for unit is "whether the employees in the proposed voting group share a community of interest with the currently represented employees and whether they constitute an identifiable, distinct segment." Accord, Armour and Co. 40 NLRB 1333 (1941); Warner-Lambert Co., 298 NLRB 993 (1990). The Board further reasoned:

> The petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit.
>
> * * *
>
> The grouping of 15 to 17 phlebotomists, while small, is neither an arbitrary nor a random grouping of employees. Rather, it is a group of employees who perform the same distinct functions, are in the same distinct employee classification, are organizationally included in the same administrative division in the hospital laboratory, work in the same location in the Employer's hospital, and have the same supervision. There is no contention that there are additional employees classified as phlebotomists who are not included in the petitioned-for voting group.

Id. at 2-3.

Thus, the Board found the inclusion of the single classification into the unit by self-determination election to be appropriate.

The Regional Director in St. Vincent relied on St. John's Hospital, 307 NLRB 767 (2011), in which the Board held that a residual unit sought in that case should have included all unrepresented skilled maintenance employees, i.e., maintenance mechanics, power plant operators and incinerator operators. However, the Board noted in St. Vincent, 357 NLRB No. 79 at 3, that the St. John's decision "did not specifically address whether the regional director was correct in including the skilled maintenance employees not originally sought by the Petitioner." For this reason alone, St. John's is not controlling precedent and can be distinguished due to the Board's principle expressed under the self-determination election cases. This means that the Board will permit an incumbent petitioner to add employees to an existing unit and that doing so does not create undue proliferation of bargaining units. Rather, the additional employees, such as those sought in the petitions in this case, would bring the unit closer to a grouping permitted by the Board's Health Care Rule. The purpose of the Act would be met by affording these employees an opportunity to vote for inclusion in the existing bargaining unit.

The SPD division with its two departments, Warehouse and Materials Management, is the only supply chain by which hospital workers receive the supplies and equipment they need and by themselves constitute identifiable and distinct segments of the work force. Employees included in the self-determination petition, Case No. 13-RC-143495, have a strong interconnection with members of the existing bargaining unit. Supply Chain Techs, including the OR Materials Tech, have interaction with Unit Clerks and PCT's. (Jackson, Tr. p. 40). Unit Clerks call SPD employees to fulfill patient needs or for general floor supplies. (Jackson, Tr. p. 40, 45). SPD employees also interact with housekeeping and linen employees who use the same AGV system to move their work materials. (Jackson, Tr. p. 46)

Cooks and Bakers have regular interaction with existing bargaining unit members as well. FSA's, who are already members of the bargaining unit, are paid $1.00 per hour wage adjustment for all time of four or more hours assuming the duties of the Cook or Baker. (Case No. 13-RC-132042; Petitioner Exhibit (Pet. Exh.) 1). Obviously, the parties have previously recognized the inter-connected nature of the food service employees already in the unit and the Bakers and Cooks who are currently seeking to join the unit.

The Food and Nutrition Service employees are also distinct from others of the Employer's employees based on their preparation of patient menus by Diet Clerks and production and service of food by the Cooks, Bakers, Food Servers, Food Service House Attendants and Cashiers. These employees, including the Secretaries work in a separate division of the Hospital that is solely involved in the feeding of employees, guests and patients. No other hospital employees perform this in another administrative division.

The Phlebotomists are the only nonprofessional employees in the Hospital who draw blood from patients. For this reason, they too are a distinct group among the other

nonprofessional employees and are entitled to a separate self-determination election. St. Vincent, Supra.

B. The Board's Health Care Rule Does Not Require A Wall-To-Wall Voting Group.

Relying solely on the Board's Health Care Rule and St. John's Hospital, the Employer argues that the only appropriate voting group is a wall-to-wall residual unit of all remaining unrepresented non-professional employees. But, as was discussed at length in St. Vincent, St. John's Hospital does not control under the circumstances presented in this case. As the Board explained, "[i]n that case, where there were already five non-conforming skilled maintenance units, the petitioner, an incumbent, sought to represent yet another, separate, residual unit that included only a portion of the remaining unrepresented skilled maintenance employees." St. Vincent, 357 NLRB No. 79 at 3. In St. John's Hospital, the Board refused to entertain the incumbent's petition for a new, separate residual unit because to do so would cause undue proliferation of units. St. Vincent, 357 NLRB No. 79 at *3.

However, the Board clearly distinguished the circumstances presented in St. Vincent from that in St. John's Hospital, on the basis that the petitioner in St. Vincent was seeking to add the phlebotomist title to an *existing unit*, and was not seeking an election in yet another additional residual unit. The instant case is distinguishable for the same reasons. Here, Local 743 represents a single, non-conforming nonprofessional unit, and it seeks to add additional employees in more than one job classification to that unit. If Local 743 is successful in the representation elections, there will remain only one bargaining unit of nonprofessional employees. There is, therefore, no threat of undue fragmentation of units, as was contemplated in St. John's Hospital.

The Regional Director found that the Employer's reliance on the Board's Health Care Rule is similarly misplaced. Decision and Direction of Election, pp. 5-6. By its terms, the Health Care Rule does not apply to existing non-conforming units. It states, in relevant part:

> (a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances *and in circumstances in which there are existing non-conforming units*, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, except that, if sought by labor organizations, various combinations of units may also be appropriate:
> (1) All registered nurses.
> (2) All physicians.
> (3) All professionals except for registered nurses and physicians.
> (4) All technical employees.
> (5) All skilled maintenance employees.
> (6) All business officer clerical employees.
> (7) All guards.
> (8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. (Emphasis added).
>
> * * *

29 C.F.R. §103.30 (emphasis added). Where there are existing non-conforming units, the limitations of the Health Care Rule do not apply. Moreover, the Rule's admonition in Section 103.30(c) that the Board "shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this Section" applies only where existing non-conforming units exist and "a petition for *additional units* is filed." 29 C.F.R. §103.30(c) (emphasis added). No additional bargaining unit is sought by the Petitioner in this case. Instead, there is only one bargaining unit of nonprofessional service and maintenance employees.

The application of the Health Care Rule was also discussed in St. Vincent:

> In order to avoid undue proliferation of bargaining units in acute care facilities, the Board's Health Care Rule, as previously stated, designated eight specific units that would be appropriate in acute care faculties. However, the Rule addressed only prospective, initial organizing of units in acute care facilities, and does not specifically address the situation which exists in the present case, i.e., where an

> acute care facility was partially organized in a nonconforming unit or combination of units. The Board specifically deferred such situations to adjudication.
>
> An Armour-Globe self-determination election, which the Petitioner seeks here, undeniably avoids any proliferation of units, much less undue proliferation, because it does not result in the creation of and election in a separate, additional unit. Rather, an Armour-Globe election permits employees sharing a community of interest with an already represented unit of employees to vote whether they wish to be added to the existing unit. . . .

St Vincent, 357 NLRB No. 79 at 3 (citations omitted). In this case, like in St. Vincent, the limitations of the Health Care Rule do not apply. The concerns of fragmentation underlying it are not present in this case, i.e., where the petitioner seeks to add job titles to an existing non-conforming unit and no additional non-conforming unit is being created.

The Regional Director properly did not ignore the precedent set in St. Vincent and like cases and did not adopt the Employer's reasoning that the instant petitions seek inappropriate units solely because of the alleged fragmentation or proliferation of units that might occur. The Employer argued that by allowing a series of rolling elections, the Board subjects Rush to a repeated stream of elections and negotiations.

Similar concerns have been rejected in other Board cases. As was noted by the Board in St. Vincent, a petition seeking to add a group of unrepresented employees to an existing unit actually avoids unit proliferation. St. Vincent, 357 NLRB No. 79 at 4. Likewise, in Macy's Inc., 361 NLRB No. 4 (2014), a case involving the appropriateness of a departmental unit of cosmetics and fragrances employees, the Board rejected arguments similar to those posed by the Employer in this case. The Board held that the fact the petitioner was previously party to an election involving a storewide unit, but later petitioned for a smaller unit, "in no way [ran] afoul of Section 9(c)(5) or any other statutory requirement." Macy's Inc., 361 NLRB at 22. For the same reason, Rush's argument here, based on the 2006 residual election petition filed by Local

743 in Case No. 13-RC-21439, does not prevent the Union from filing the instant self-determination petition for less than a wall-to-wall unit. The Board further addressed an argument, similar to the Employer's argument in this case, that finding the petitioned-for unit appropriate would "harm the retail industry through 'destructive fractionalization.'" The Board reasoned, in part:

> . . . [W]e find it significant that this petitioned-for unit consists of 41 employees, more than one-third of all selling employees, and nearly one-third of all employees at the Saugus store. This unit is also significantly larger than the median unit size from 2001 to 2010, which was 23 to 26 employees. These statistics belie amicus NRF's description of the petitioned-for unit as a "micro-union," and refute the Employer's and amici's assertion that finding this unit appropriate will result in "dozens" of units within a single store. . . .

Macy's Inc., 361 NLRB at 19. (citations omitted). Like in Macy's Inc., issues of fragmentation or proliferation are simply not present in this case.[9] As the Employer's claims of fragmentation or proliferation of units are without basis, the Region should conclude that self-determination elections among petitioned for employees are appropriate.

The Employer, through its witness Shannon Schumpert, could not identify or substantiate the Employer's argument that multiple self-determination elections would be disruptive. (Er. Exh. 2; Schumpert, Tr. pp. 148, 152-153, Case No. 13-RC-139061 (10/29/14)). When Congress enacted the health care amendments to the National Labor Relations Act, a major concern was the possibility of proliferation of bargaining units as expressed in an admonition during the 1973 legislative hearings. National Labor Relations Board, Collective Bargaining Units in the Health Care Industry; Second Notice of Proposed Rulemaking, 53 Fed. Reg. 33923 (1988). The

[9] The same is true of the Employer's concerns about the disruptive effects of elections and negotiations for individual titles. If the Board is to rely on the Employer's bald assertions in this regard, it should also note that, even if the Employer's point of view is accepted and the only appropriate unit is a wall-to-wall residual unit of non-professional employees, the ruling will not alleviate its concerns. The Board still permits an election in such health care units every year (absent another bar). Under the Employer's disruption argument, there could be as many as eight elections each year. Thus, the Board's Health Care Rule can be used to dismiss the disruption argument. The Board has settled the complaints raised by the Employer. As the Employer has not claimed there is any bar to an election among the employees, the self-determination elections are appropriate.

concern was directed toward problems that could be caused by having many separate bargaining units that would lead to a substantial number of strikes interfering with the delivery of health care services, including wage whipsawing strikes and jurisdictional disputes.

Self-determination elections in this case would not necessarily invoke these concerns were the Union to be successful in the self-determination elections. First, the Employer is protected by a no-strike clause in the collective bargaining agreement that prohibits persons covered by the contract to strike, curtail or restrict hospital functions or operations. (Pet. Exh. 1, Collective Bargaining Agreement, Sec. 10). Second, the adding of additional employees does not create an additional bargaining unit but does give the union an opportunity to negotiate contract provisions for employees who vote to be represented by the Union. Once these employees are covered by the contract, there would not be any ability for them to take economic action to engage in wage whipsawing or leapfrogging because they will be covered by the contract, and the wage negotiations would involve all employees in different job categories. Whatever intra-union tensions may exist over wage differences, they would have to be resolved during the course of bargaining. Such tensions could not lead to individual groups engaging in whipsaw strikes because there would be only one bargaining unit and such actions would be prohibited under the terms of the collective bargaining agreement. The same would be true for jurisdictional disputes.

Board Member Hayes' dissent in St. Vincent expressed concern that "multiple subsets of employees at this hospital in an unknown number of mini elections" would be inconsistent with the Board's anti-fragmentation rule. This of course misses the fact that multiple units would not be created in the self-determination context. The position has already been dismissed by the Board. Under Section 9(e), units are limited to one election in each year, and under the Health

Care Rule for eight bargaining units, the Hospital could conceivably undergo an election once a year in each of the eight bargaining units established by the Rule. Therefore, one or more self-determination elections would be consistent with this framework.

The final reason not to accept the Employer's objection that multiple elections would be disruptive is based on the testimony of its own labor relations director, who testified that the employees talking about the Union campaign interfered with patient care. (Shumpert, Tr. p. 150, Case No. 13-RC-139061 (10/29/14)). However, the Employer's conduct stimulated such talk among employees and supervisors during working time, according to Ms. Shumpert. She stated that the Hospital hired consultants to educate its supervisors about the Union, and the supervisors were allowed to discuss the Union during working time with the employees eligible to vote in the election. (Er. Exh. 2; Shumpert, Tr. p. 149, Case No. 13-RC-139061 (10/29/14)). The Hospital encouraged and allowed union related discussions between its supervisors and the PCTs. Ms. Shumpert admitted that under Section 8(c) of the Act, the Hospital could have decided not to campaign against the Union but chose the opposite strategy.

No evidence of a probative nature was produced of disruption attributed to such discussions. The Hospital's consultants encouraged the supervisors to campaign by having conversations with the employees. Had the Hospital chosen not to campaign, employee discussions at work would have been minimized. (Er. Exh. 2; Shumpert, Tr. pp. 149-151, Case No. 13-RC-139061 (10/29/14)). She was aware of the topics discussed by the consultants and that the supervisors spoke to the workers on work time about these topics, which were obviously framed to persuade the employees to vote against the Union. No supervisor or employee was disciplined for engaging in such conversations about the election during working time. (Shumpert, Tr. pp. 148, 152-3, Case No. 13-RC-139061 (10/29/14)). Further, she did not

identify any situation in which the delivery of patient care was impeded, despite the Hospital making such a claim. (Shumpert, Tr. p. 151, Case No. 13-RC-139061 (10/29/14)).

There is no evidence to support patient care disruption having occurred in the PCT election. Therefore, the Employer's bargaining unit argument based on disruption should be rejected. Massachusetts Society For Prevention of Cruelty To Children v. N.L.R.B., 297 F.3d 41, 48 (1st Cir. 2002) (without evidence of disruption that could occur by bargaining on a single-facility basis, Board could order a single facility bargaining unit; court will not require the Board to consider mere unsupported speculation that a single-facility unit might interfere with patient care). Accord, Staten Island University Hospital, 24 F.3d 450, 455 (2d Cir. 1994); Northrop Grumman Shipbuilding, Inc., 357 NLRB No. 163, slip op. at 6, n.16 (2011) (Member Hayes' speculation about the impact of unit size on collective bargaining and labor relations stability is exactly that, wholly unsupported by evidence of any kind). Therefore, Rush's concerns about multiple elections being disruptive are without foundation.

The Employer's anti-proliferation argument should also be rejected because the Board has declined to interfere with historical units. Here, the Employer's wall-to-wall approach is inconsistent with the manner in which the Board handled a registered nurse case in Crittenton Hospital, 328 NLRB 879, 881 (1999) (where the petitioner sought to represent a bargaining unit of RNs that was represented by an incumbent union). The union intervened in the representation case proceeding at which the employer argued the voting unit should include thirteen job classifications of RN's who had been historically excluded from the existing unit. The Regional Director directed an election for the RNs and those who had been excluded, but the Board reversed on the grounds that the Health Care Rule does not "require that an historical non-conforming unit must be enlarged to conform to the units prescribed by the rule. By its own

terms, the Rule applies only to initial organizing attempts to a petition for a new unit of previously unrepresented employees." Id. at 880; Pathology Institute, Inc., 320 NLRB 1050, 1051 (1996) (the appropriate unit issue for non-conforming units must be decided not under the Rule, but under traditional representation principles). The Regional Director followed this reasoning in the instant case. Decision and Director of Election, n.6, p. 6.

Here, the Employer asserts that the Union is seeking only certain employees, not all of the non-represented nonprofessional employees. This position has already been rejected in the prior PCT Case, in which the Employer's Request for Review was denied on August 27, 2014, in Rush University Medical Center, Case No. 13-RC-132042 which was based upon St. Vincent and earlier Board cases, such as Pathology Institute, where the Board held the Rule does not apply in non-conforming bargaining unit cases. The Employer claims that the employee groups sought in this petition are not distinct, as they were in St. Vincent and the PCT case. However, they are distinct in various segments: warehousing, receiving and distribution of supplies, food services and blood drawing. Under St. Vincent, the union filed for only one job, phlebotomist. In this case, the Regional Director ordered four separate voting groups, each of which is distinct from the other. The attempt by Rush to force other unrepresented employees into the historical unit in order to create a wall-to-wall unit would be similarly inequitable. The Board held in St. Vincent that an attempt to force the inclusion on the incumbent union of all unrepresented employees onto an existing unit would be a misapplication of the Rule and inequitable.

Rush objects to the self-determination petition on the grounds that the Union was not sufficiently inclusive in its filing, but the community of interest factors are quite flexible, as demonstrated in St. Vincent. The Board has noted with approval of the courts that multiple factors make up the test for community of interest. These include extent of organization and the

desires of the affected employees. Friendly Ice Cream Corp. v. N.L.R.B., 705 F.2d 570, 576 (1st Cir. 1983); Massachusetts Society For The Prevention Of Cruelty To Children v. N.L.R.B., 297 F.3d 41, 46 (1st Cir, 2002); Sohio Petroleum Co. v. N.L.R.B., 625 F.2d 223, 225 (9th Cir. 1980); N.L.R.B. v. J.C. Penney Co. Inc., 620 F.2d 718, 719 (9th Cir. 1980); N.L.R.B. v. Chicago Health & Tennis Clubs, Inc., 567 F.2d 331, 335 (7th Cir. 1977), cert. denied, 437 U.S. 904 (1978); N.L.R.B. v. St. Francis College, 562 F.2d 246, 249 (3rd Cir. 1977). The Board is not fixed to follow a rigid rule, and each determination is based on the factual variations. The extent of organization and the desires of the employees in this case are demonstrated by the petitions.

C. Expansion of the Petitioned for Voting Group to Include All Non-Professional Employees is Unwarranted.

Local 743 currently represents approximately 760 nonprofessional service and maintenance employees in a bargaining unit first recognized by the Employer in 1967 and now considered to be a non-conforming unit pursuant to the NLRB Acute Care Hospital Bargaining Unit Rule. 29 CFR §103.30(a). The unit was determined to be non-conforming by Regional Director, Roberto G. Chavarry, in a Decision and Direction of Election issued on February 2, 2006. (Board Exh. 4). The job classifications represented by the Union as stated in Section 2.1 of the collective bargaining agreement are:

> All environmental aides, environmental specialists, environmental technicians, dietary workers, laundry workers, transport specialists, elevator operators, maintenance employees, central service technical assistants, nursing attendants, psychiatric aides, community health aides, lab helpers, operating room attendants, mail room clerks, unit clerks, geriatric technicians, patient service associates (PSAs), physical therapy aides, rehabilitations aides, pediatric assistants, pediatric nursing assistants, certified nursing assistants (CNAs), truck drivers (laundry & SPD), food service assistant I lead, food service assistant II lead, environmental specialist lead, transport specialist lead, unit clerk lead, and journeymen lead. The unit specifically excludes supervisors, temporary and casual employees, regular part-time employees normally working less than seventeen (17) hours per week, and all other employees of the hospital.

The most recent additions to this bargaining unit are the job classifications, Patient Care Technician I and II, as a result of the decision in the PCT case.

The Employer argued in the PCT case that the voting group should consist of Nursing Assistant II's and employees in the following nonprofessional job classifications: Baker, Bus Person, Cashier, Central File Clerk, Clerical Coordinator, Clerk, Clerk Typist, Clinical Coordinator, Patient Coordinator, Cook, Coordinator for Bed Control, Coordinator for Radiology Imagining, Customer Service Representative, Dietary Clerk, Doorman, Driver, Emergency Room Clerical Coordinator, Film Coordinator, Gift Shop Sales Person, Hazardous Waste Technician, Senior Hazardous Technician, Health Information Clerk, Health Information Technician, Hospitality Host, Input Clerk, Inventory Controller, Material Handler, Operation Room Dispatcher, SPD Technician, Orthopedic Orderly, Patient Care Technician, Personal Care Aide, Purchasing Assistant, Radiology Patient Coordinator, Receptionist, Receptionist Cashier, Referral Coordinator, Member Services Representative, Registrar, Senior Registrar, Registration Representative, Schedule Coordinator, Scheduler, Secretary, Stock Clerk, Stock Clerk Material Handler, and Waitress. The parties stipulated that these jobs were not in the current bargaining unit and were the jobs sought by the Employer to be added to the bargaining unit. See, Stipulation, Board Exh. 3, PCT Case.

In addition to the jobs identified in the PCT case, the Employer asserted in the second case for the petition filed in Case No. 13-RC-139061, that the following additional jobs be included in the nonprofessional wall-to-wall bargaining unit.

1. Secretary 2
2. Volunteer Coordinator Lead
3. JRB Activities Coordinator
4. Assistant Teacher
5. LADS Group Worker
6. Secretary 3

7. Teacher Aide
8. Secretarial Coordinator
9. PC Lab Assistant
10. Medical Equipment Tech
11. Health Info Management Tech
12. RUMG Call Center Scheduler
13. Dental Assistant
14. Patient Flow Coordinator
15. Radiology Aide
16. RUMG Certified Medical Assistant
17. RUMG Patient Flow Assistant
18. Sr. Dental Assistant
19. Breastfeeding Peer Counselor
20. Medical Assistant
21. Patient Placement Assistant
22. Secretary 3
23. Autopsy Room Tech
24. Dialysis Tech
25. Lead Parent Liaison
26. Coordinator Radiology Imaging
27. Radiology Aide
28. Per Diem Phlebotomist
29. Phlebotomist
30. Respiratory Equipment Tech

For none of the jobs referenced above has the Employer presented any evidence to show that there is a community of interest among these employees and those in the existing non-conforming bargaining unit. The Employer relies solely on the fact that they are unrepresented nonprofessional employees and should be combined into the existing unit based on the Board's Health Care Rule. Because the existing unit is non-conforming, there is no presumption that the wall-to-wall unit is appropriate, so the community of interest test would apply. Pathology Institute Inc., 320 NLRB 1050, 1051 (1996) (in a non-conforming bargaining unit case, the appropriate unit issue must be decided not under the Rule, but under traditional representation principles). Under Specialty Healthcare and Rehabilitation Center of Mobile, 357 NLRB No. 83, enf'd., Kindred Nursing Centers East, LLC v. NLRB, 727 F.3d 552 (6th Cir. 2013), the employer must support its argument for the widest possible bargaining unit by presenting

evidence that the excluded employees share an overwhelming community of interest with the included employees. No evidence has been presented to support this argument, and in fact, the Employer's labor relations director was not able to state any information about the commonality of wages, shifts, hours of work, supervisory structure, interchange and functional integration of the positions. (Er. Exh. 2; Shumpert, Tr. pp. 154-162, Case No. 13-RC-139061).

III. Employer Seeks Business Office Clericals in the Universal Nonprofessional Bargaining Unit.

Some of the jobs in the residual unit appear to have functions quite similar to those of business office clericals found by the NLRB to be properly placed in the business office clerical unit pursuant to the Board's Acute Care Bargaining Unit Rule. The Employer placed into evidence a number of exhibits that represent the job descriptions for these positions that it believes are properly part of the residual unit. However, the Union asserts that the job descriptions reveal duties that seem to be more like those of business office clericals. These jobs are not part of a service and maintenance bargaining unit, and the Union submits this argument in support of its objection to the Employer's wall-to-wall bargaining unit claim. The Regional Director believed it was not necessary to reach this issue based on his rejection of the Employer's claim for an expanded voting group. Decision and Direction of Election, n. 4, p. 2.

The Customer Service Representatives I and II are exemplars, according to the Employer, of jobs performed in multiple departments of the hospital. The Customer Service Representative in Anesthesiology and the Customer Service Representative I and II in Radiation Oncology Department appear to be receptionist-type jobs in which the employees are responsible for greeting the patients, scheduling clinical and surgical appointments, entering patient demographic and insurance information and other key information into the department's clinical information system, answering and screening all calls, picking up and sorting mail. (Er. Exhs.

23, 24 and 25, PCT Case). The Customer Service Representatives in Radiation Oncology is responsible for collecting patient co-payments, patient balances and referrals at the time of patient check-in, and performs collection duties for selected insurance carriers. (Er. Exhs. 24 and 25, PCT Case). Likewise, the Senior Dental Assistant meets with patients and guarantors to discuss financial arrangement, performs patient billings and works closely with insurance companies to secure payments. (Er. Exh. 5, PCT Case). These are business office functions and should be excluded. William Backus Hospital, 220 NLRB 414, 415 (1975).

There are three positions identified in Employer's Exhibits 36, 37 and 38 (PCT Case) as Health Information Management Clerks I, II and Technician. These are essentially medical records employees responsible for sorting files, filing microfilm in correct order, performing maintenance of files, maintaining a log of work performed, processing all requests, scanning and performing quality review of images, maintaining the scanning equipment and locating missing charts for appointments. The Health Information Management Technician is responsible for pulling and locating missing charts, distributing labs and reports, performing chart review, generating medical record numbers, preparing general correspondence, distributing reports, and responding to customer requests. (Er. Exh. 38, PCT Case). The Union believes employees performing this work are essentially medical records clerical employees and should be excluded from the residual unit. Seton Medical Center, 221 NLRB 120, 122, n. 21 (1975); St. Luke's Episcopal Hospital, 222 NLRB 674, 677 (1976) (excluding medical records clerks from service and maintenance unit).

Likewise, the positions of Physician Referral and Health Information Coordinator I, Physician Referral Coordinator II, Senior Physician Referral and Health Information Coordinator and RUMG Referral Coordinator II are business office clerical positions. (Er. Exhs. 46, 47, 48

and 49, PCT Case). The job description for Physician Referral and Health Information Coordinator I indicates this is essentially a job performed by Rush's Marketing and Communications Team. This job is critical to Rush's marketing efforts and key to the commitment to providing excellent patient service. Among the duties performed by this job are class registration, email requests, class seminar and screening reminder calls, all data entry for class attendance and surveys, providing phone service as needed by processing inbound and outbound phone calls. The Senior Physician Referral and Health Information Coordinator also answers incoming phone calls to match the caller needs with the medical center resources. The employee works in the call center and assists in tracking and trending the staffing of call center service levels. These appear to be call service telephone answering type jobs that have been found to be business office clerical functions in earlier cases involving switch boards, telephones and PBX operators. As such, these positions were properly excluded from the voting units. St. Catherine's Hospital Dominican Sisters of Kenosha, 217 NLRB, at 789; St. Francis Hospital, 219 NLRB 963, 964 (1975); St. Claude General Hospital, 219 NLRB 991 (1975); Valley Hospital Ltd. 220 NLRB 1339, 1343 (1975).

Receptionist Patient Access, Employer's Exhibit 50 (PCT Case), is a receptionist type job that also should be excluded. St. Catherine's Hospital Dominican Sisters of Kenosha, 217 NLRB No. 133, at 789 (1975), Southwest Community Hospital, 219 NLRB 351, 353 (1975); Duke University, 226 NLRB 470 (1976); William Backus Hospital, 220 NLRB at 415. RUMG Call Center Scheduler, Employers Exhibit 52 (PCT Case). This is essentially a call center job to transfer calls of patients, management and handling messages. The Employer's argument that the appropriate unit is a wall-to-wall unit is unsupported by fact and law.

CONCLUSION

For the foregoing reasons, the Regional Director's Decision and Direction of Elections should be sustained and the Employer's Request for Review should be denied.

Respectfully submitted,

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BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 13

Teamsters Local 743,	)	
	)	
Labor Organization,	)	
	)	
And	)	Case Nos. 13-RC-143495, 143510,
	)	143497 (consolidated)
Rush University Medical Center,	)	(Self-Determination Election Petition)
	)	
Employer.	)	

CERTIFICATE OF SERVICE

The undersigned attorney, Joel A. D'Alba, states that he electronically filed the document entitled *Petitioner's Response to Employer's Request for Review* and sent a copy via Electronic Mail on March 12, 2015, to the following:

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